

JOHN SWINTON
OF
SWINTON,

In Relation to
HIS FATHER'S PRETENDED
FORFEITURE:

Upon pretext whereof, the Estate of *Swinton*
hath been unjustly Possess'd by the late
Duke, and this Earl of *Lawder-*
dale, ever since the year 1660.

WITH

The *Reasons* of Reduction of the said *Forfeiture*, now Depending
against the said Earl, at the Instance of the said *John Swinton*,

BEFORE

THE PARLIAMENT.

Printed in the Year, MDCXC.

TH E Duke of *Lauderdale* having, after the late King *Charles's* Restoration, first entered to the *Possession*, and then obtained a *Gift* of the deceas'd *Swinton's* Estate, upon pretence of his being forfeited by a *Committee* of Estates, (for his being with the *English*) in the Year 1651. By which Right, and a supervenient *Decreet* of Forfeiture, pretended to be given against *Swinton* (for the same Crime) by the Parliament 1661. he had that *interest* and *power* in this *Nation*, to possess the said Estate as long as he lived, and at his Death, to leave it in Succession to his Brother this Earl of *Lauderdale*, who hath possessed it ever since. Albeit there was nothing could ever be made appear, to evince that there was any such Forfeiture against *Swinton* in the Year 1651. but the pretended *Extract* of a *Decreet in absence*, elicited from an *Under-Clerk* ten years after, of which there was never the least Warrant upon Record. And that as to any Forfeiture in the year 1661. there was only a *Process* then intended, that not being insisted in, never came the length of a *Sentence*. But to supply this Defect, *Swinton* having objected it to the Duke of *Lauderdale*, the later end of the year 1673. there were Methods taken in the Month of *January* 1674. to procure *Minutes* to be made up by a *Clerk*, as if a *Sentence* of Forfeiture had followed upon that *Process* 1661, and thereupon a *Decreet* was got extracted 13 or 14. years after. Tho this was thought so ticklish a thing at that time, by the then Clerk Register, as not daring to adventure upon it without extraordinary *Precution*, he first dealt with the late Earl of *Crawford*, (who presided in that *Parliament*, when the Chancellor was absent) to sign the *Minutes*, as in *praesentia Dominorum Parliamenti*, albeit 13. years after that *Parliament* (at least that Session of it) was no more in *Being*: and then caused *application* to be made in behalf of the Duke of *Lauderdale*, to the Lords of Session, to give their Warrant for extracting, what he was conscious to himself was so *unwarrantably* done.

That part which the Earl of *Crawford*, (a Person of such known

Honour and Integrity) was prevail'd with to have in so unjustifiable a Practice, his Lordship had the Justice to leave attested by him before he died, in a *Missive Letter*, all written with his own hand, and deposited by him in the hands of the Lady *Helene Sinclair* his Daughter, to be delivered by her after his Death (as it punctually was) to the deceas'd *Swinton*, to whom it was directed. Which Letter is conceived in these terms.

TYNNINGHAME the 8 June, 74.

SIR,

YE were pleased lately, both your self, and by some others, to say, that I had done you an Injury in signing the Minutes of your Process, especially being out of all Implemment when I did it. I should think my self very unfortunate, if I did any thing willingly, to prejudice you or any Man alive. Therefore I shall tell the Truth (in point of Fact) now, not being able to speak with you when ye desired me. My Lord Register sent down a Servant to my Lodging in James Deans's House, some day in January or February 74. and said, If I were within, he would come and speak with me. I bid his Man tell him, I was presently going out, and should call to him up the way. When I was near the length of the Cross, I met him in his Coach. I made mine halt, and went out, (as he did) to the Plain Stones. He told me I behoved to go to some House. So we went to Patrick Steel's House. where he took out a long Scroul, and said, That was your Process. I told him I knew nothing of it: it was so long ago, that I did remember nothing. He answered, There is the Chancellor's Subscription, to what passed before he went to England; * and I being President after, behoved to sign it: for it could not be presented then, I going presently to London. I first said, Being out of all Office, I thought it unfit for me to do. next I said, some of the Minutes (as the Inditement was) were of

* Meaning the Minute before the Articles, mentioned hereafter, pag. 13.

of old Writ, and a great deal thereof new. He said, Both were *Mr. John Hay* of Haystoun's hand, and he was answerable for the Minutes. Upon this Representation I did it: and I have told you the naked Truth, upon my Honour and Conscience: and I did it without end of advantage, or prejudice to any. But being pressed to it as my Duty, I hope ye will believe this ingenuous Dealing, and keep no more prejudice or misunderstanding against,

Your affectionate Servant,

Addressed on the Back,
For *John Swinton*, These.

Crawfurd & Lindesay.

It might be thought strange, why the Duke of *Lawderdale*, being a Man of such Power during the late King *Charles's* Reign, and knowing his Title to be so defective as it was, should not rather have endeavoured to have had the deceased *Swinton* truly forfeited, either by causing insert in that Process, intended before the *Parliament 1661.* or causing intent a new one; rather than to have had recourse to such indirect and dangerous Methods to support a supposed Forfeiture, whereof there either was no Warrant upon Record, or whereof the Warrants upon Record were false. But the truth is, *Swinton's* being taken and detained Prisoner by the *ENGLISH*, in the year 1651. being all the ground there was for the Crime alledged against him at that time, for which he was pretended to be forfeited; and continuing in that state, till after the Fight at *Worcester*, and subjection of the *Scotish* Nation to the *English*: the Duke durst not, for all his Power, adventure to put a Crime so calumnious, to the Trial of a *Parliament*, as knowing *Swinton* would have been able to have cleared himself, and consequently able to have recovered an Estate out of his hands, that he had got himself thus possessed of, and could not but be very loath to part with.

The Letter writ by the Earl of *Crawfurd*, having been shown to the late K. *Charles*, and the intire matter of Fact represented to him, as it truly was; he in the year 1682. granted Commission to the then Lord

Lord *Chancellor* and several other Persons, to make Inquiry into the whole *Procedure* concerning the said Forfeiture, and to inspect the Records of *Parliament* in relation to the same, and to make Report thereof to His Majesty. Pursuant whereunto, the Records of *Parliament* were inspected. And as there was *nothing at all* found as to the pretended Decreet of Forfeiture, in *anno 1651*. so as to that of *anno 1661*. all that was found, did (from *ocular inspection*, and many other Circumstances concurring with the Earl of *Crawford's* Letter, and even from the Records of *Parliament* themselves) make it manifestly evident to be *false*. However, the Earl of *Lauderdale* had that influence upon those, to whom the Trial of this Affair was recommended at that time, as rendered the further Prosecution of the Commission given them, ineffectual. Nor was *John Swinton*, who now represents his Father, nor his eldest Brother before him, in a capacity to quarrel otherwise their Adversarie's Title, so long as there stood pretended Decrees of *Parliament* in their way, of a Forfeiture (how false and groundless soever) against their Father.

Thus the Estate of *Swinton* hath been unjustly possessed by the Duke of *Lauderdale*, and the Earl his Brother, for the space of near 30 years: (fortho the Duke got his Gift of the pretended Forfeiture of that Estate, in the year 1661. yet he entred to the Possession of it in the year 1660. eight Months before the Gift was granted.) During all which time, the true Proprietars have been debarred from access, to an Inheritance transmitted to them from their Ancestors, by an uninterrupted Succession of above 600 years. And for the Recovery whereof, upon the present *Revolution*, this *Swinton* the Representative of the Family, being to make Application to the PARLIAMENT now sitting, as the *Supreme Judicatorie* of the Nation, and in order thereunto, having after the first *Adjournment*, intented a *Reduction* before the same, of the two pretended Decrees above mentioned, of his Fathers *Forfeiture*; and the Earl of *Lauderdale*, having been cited thereupon by a Warrant of the Council, (the Signet not being open)
and

and the Rents of the Lands by the Council's Order sequestered in the Tennents hands during the *Dependence*, the REASONS of the said *Reduction* are here subjoyned.

REASONS OF REDUCTION at Swinton's Instance against the Earl of Lawderdale.

THE PRETENDED DECREET OF THE COMMITTEE OF ESTATES, 1651. whereupon the Duke of *Lauderdale's* Gift is founded, cannot be respected as a Decreet and Doome of Forfeiture, and ought to be *reduced*.

1. Because it is a Decreet in absence, not subscribed by the Clerk Register for the time, but by Mr. *Thomas Henrison*, pretended to be Clerk to that *Committee*, from whom a pretended Extract thereof was elicited in the year 1661. ten years after, and whereof there is no Warrant extant in the Records of Parliament.

2. Though it laboured under no such Defect; yet it being against several other Persons, as well as the deceased *Swinton*, and particularly against one *John Hume*, accused and convicted for betraying the Castle of *Edinburgh* to the *English*; It bears an expresse Declaration, *That the King and Committee of Estates, for Reasons and Considerations moving them, did restrict the Sentence and Punishment, to the Execution of the said John Hume to the Death.* Which clearly takes off the effect of the Sentence, as to *Swinton* and all the rest, till it should be reconsidered by the King and Parliament.

3. By the late CLAIM OF RIGHT, it is declared by the MEETING OF ESTATES, *That the causing pursue and forfeit Persons upon frivolous and weak Pretences, and upon lame and defective Probation, is contrary to Law.* And it is evident, that this pretended Decreet proceeds upon most frivolous, weak, and irrelevant

relevant Pretences. The Crime therein libelled against Swinton being, That he having a Charge in the King's Army, deserted the same and went in to the Enemy, and had his frequent Residence with, and resorted to the Enemy in the Town of Edinburgh, Cannongate and Leith, carrying his Sword about him. Which as libelled, was both irrelevant and calumnious. For he did not desert the King's Army, but being Lieutenant-Colonel of a Regiment of Horse under the King, and at that time his necessary Occasions calling him over to his House in the Merse, he gave up his Commission (as he, or any man in such Circumstances might lawfully do) and one Crawford of Crawfordland was immediately thereupon put in his Place. And as he crossed the Water, (several Weeks, if not Months after he had thus quit his Charge, and Crawfordland had got it) being intercepted by a Party of the English, and carryed to their General's Quarters; he was for some time detained there a Prisoner, and thereafter, upon his Parole, had liberty to go home. Which neither in Sense, nor Reason, nor in the Construction of Law, could be understood a deserting of the King's Army, and going in to the Enemy. And that he resorted to, and resided with the Enemy in Edinburgh, Cannongate and Leith; was a most frivolous and absurd Pretence, to infer the Crime of Treason. For these Places, and the greatest part of the Southside of Forth, being then under the Enemy's Power; it could infer no Crime, much less the Crime of Treason, against any who had occasion for their lawful Affairs, to come where the Enemy was; that they resorted to the Enemy, or conversed with them. For if that had been relevant, the most part of the Inhabitants of this side of Forth, might have at that time been forfeited upon the same ground. And certainly simple Conversation, and being present with an Enemy, is not relevant to infer a Crime, unless it could be made appear, that the Party so conversing, and present, joyned with the Enemy in Counsel, or Acts of Hostility against the State : which is neither libelled nor could be alledged in this Case. And as to Swinton's having a Sword about him, when he thus resorted to, and conversed with the Enemy ; he being a Gentleman, and a Prisoner upon Parole, had liberty to wear his Sword : and his doing so, could infer no Crime against him, unless it had been libelled that he had, whilst he wore it, used it as an Enemy.

4. As the said pretended Decreet proceeds upon frivolous and irrelevant Pretences, and so upon that Head falls under the fore-said Article of the CLAIM OF RIGHT; It falls under the same Article by the Defect of Probation. For the said Decreet being a Decreet in *absence*, neither condescends, as to Swinton, upon Witnesses that were examined against him, nor upon what they deposed, as all Decrets of this nature (where Parties are not found guilty by their own Confession) ought to do: but only bearing, That the King and Committee of Estates had found the foresaid Pretences, libelled against Swinton, relevant and SUFFICIENTLY proven, without expressing what way the same were proven, or bearing even so much, as that Witnesses were adduced at all in the Probation. Neither is there the least vestige in the Records of Parliament, of any Probation whatsoever, led any manner of way against Swinton in this Matter. So that the whole Probation in this pretended Decreet, as to Swinton, resolving in the simple Assertion of a Clerk, without any authentick Document of the Probation upon Record, is in Law, no Probation at all.

5. The Duke of Lauderdale, after he had obtained his Gift of Swinton's Forfeiture, founded upon the pretended Decreet of the Committee of Estates, 1651. being convinced how groundless and illegal the said Decreet was; caused raise a new Inditement against Swinton, (then a Prisoner in the Tolbooth of Edinburgh) before the Parliament 1661. and therein, amongst other Crimes which he caused charge Swinton with, he causeth libel the very same Crime in the very same words, that was libelled against him in the Decreet 1651. giving him withall the Designation of John Swinton OF SWINTON. Which was an implicit passing from the said Decreet, and a most evident Demonstration that it was then looked upon by him as no Decreet. It being obvious both in Law, and common Sense, that a Man once forfeited, cannot be again forfeited, seing by the first Forfeiture, in the Construction of Law, he is no more in being, and can have no Estate to forfeit. Upon all
 B which

which Grounds it is manifest, that the said pretended Decreet 1651. is null and void to all intents and purposes.

AND the said Decreet 1651. being *null*, the Duke of Lauderdale's Gift of Forfeiture, as being only founded upon that Decreet, is null, and must fall in *consequence*. Nor can it subsist by the pretended subsequent Decreet of Forfeiture (if any such Decreet had truly been) in the year 1661. because the Gift is anterior to it: the said Gift being dated the 25 of *May* 1661. and the Decreet 1661, bearing Date the 12 of *July* thereafter. And by the CLAIM OF RIGHT it is declared, *that the disposing of Forfeitures before Sentence, is contrary to Law.*

AND AS TO THE PRETENDED DECREET OF THE PARLIAMENT 1661. The same is *null*, and ought to be *reduced*.

1. Because the same proceeds either upon *weak and frivolous Pretences*, or upon *Pretences false and calumnious*, and is destitute of all *Probation* whatsoever. For as to the *first* Article of the Inditement whereupon it proceeds, bearing, *That Swinton sate and voted in the Parliament 1649. in which the Act concerning the Engagement in the year 1648. was rescinded, and several loyal Persons were forfeited, and turned out of Office;* It was not relevant. Because no Man can be, nor ever was called in question for sitting and voting in a Parliament, or acting therein in a *Parliamentary* Capacity. Seing what is done by a Parliament, is not to be understood the Deed of any *single* Person, but of the whole *representative Body* of the Nation. And the King did so far acknowledge that Parliament 1649. that he admitted Commissioners from it, as from the *Representatives* of the Kingdom. And by his *Treaty* with them, he was obliged to ratifie the Proceedings of that Parliament, after his coming home. Which was accordingly performed by him, in a Parliament held after his Return, in the year 1650. Neither did it appear that *Swinton* voted for the rescinding the Act in relation to the *Engagement* 1648. nor for the *forfeiting*, or *putting out of Office* the Persons mentioned in the Inditement.

And as to the *second* Article, bearing *Swinton's holding Correspondence with the Usurper, by writing to, and receiving Letters from him, or by sending to, and receiving Messages from him by word of Mouth;* It was ab-

olutely

solutely denied, and neither was, nor could be proven, it being in it self altogether false and calumnious. And whereas in the said second Article, it is alledged, as in the first Decreet, that *Swinton* *deserted his Employment in the King's Army, and went in to the Enemy* ; the former Answer to the said first Decreet is oppon'd.

And as to the *third* Article, That *Swinton* *did go along with the Usurper's Army to Worcester, and fought there against the King, at least was with the Usurper there in Arms.* (and which is the onely Crime insisted upon by the King's Advocate against him ;) It was likewise denied, as it was *conceiv'd*. For if it could have been made appear, that *Swinton* was at *Worcester* , he could have instructed, that he was there as a *Prisoner* and not as a *Souldier*. Neither could it ever have been proved, that he acted any thing there in a *hostile* manner. But on the contrary, was ready on all occasions to serve his Countrey, to the utmost of his Power in that sad Conjunction: In which two of his Brothers in the King's Service, Mr. Robert *Swinton*, who commanded a Troop of Horse, and Mr. Alexander now of *Mersington*, and one of the Senators of the Colledge of Justice, had the fortune, the first of them to be kill'd, and the other taken Prisoner. And the good Offices he did to many of his Countrey Men at that time, it is hoped are not yet forgotten. And if he had been in Arms, as he was not ; yet this being a Crime alledged to have been committed in *England*, he was secured by the *English Act of Indemnity*.

And as to the *fourth* Article, that *Swinton* *did sit and vote in a Parliament in England, declaring the King or any other of the Royal Family, incapable to succeed in the Royal Government: and as a Reward of his Service, was appointed one of the Commissioners for Administration of Justice, for which he got a considerable yearly Sallary out of the puctick Revenues;* If it could be made appear , that he did sit and vote in any such Parliament, yet that was no Crime, he being there as one of the *Commissioners* from *Scotland* after the *UNION*, and after the three *Kingdoms* were under the Government of the Usurper, and erected in a *Common-wealth*. And it was *denied* that he was present at the passing of any *Act* against the King and the Royal Family. And if he had been present, as he was not; it was when the Government was in the hands of the Usurper and *Common-wealth*; and it fell under the *Act*

of the *English Indemnity*. And as to his being one of the Commissioners for *administration of Justice*, and having a Salary for it; He did not accept of that Employment before the Government was settled in the hands of the Usurper, and Parliament of *England*, to which the whole Kingdom of *Scotland* had then submitted. And it is very well known what good Service in accepting of that Employment he did to his Countrey: it being the Countrey's Advantage, that such Places of *Trust*, were in Countreymens hands, rather than in the hands of Strangers, who understood nothing of the *Laws and Customs* of the Kingdom. And as for any Salary he got thereby, he was never the richer for it: but on the contrary, it is very well known, he was much more in Debt in the year 1660. than he was when he entered upon that Employment.

AND as the said pretended Decreet 1661, proceeds upon *frivolous and calumnious Pretences*, so the same is made to proceed upon so *lame a Probation*, as it is, *without any Probation at all*. For albeit it bear to proceed upon *Swinton's judicial Confession*, there is no such Confession in the Records of Parliament, other than what is contained in the *vvritten Defense* given in by him, under his Hand, before the Parliament, which is so *qualified*, as it could never be a ground of Forfeiture against him.

2. The said pretended Decreet 1661, is *null*, Because the *Minutes* on the *Margent* of the said *Inditement*, which are the *Warrants* thereof, are absolutely *false and forged*. What is evinced from the following grounds.

First, The said Minutes bearing Date 7 February, 15 May, and 12 July, 1661. and so being of a considerable interval of *Time* one from another, are nevertheless written at *one and the same time*; and as by the same *Hand*, so with the same *Pen*, and the same *Ink*: and by comparing the Ink wherewith they are written, with that of a Minute on the *foot* of the Inditement, signed by the Earl of *Glencairn* as Chancellor, of the same *Date* with the first of them, *viz.* 7 Feb. 1661. (and which is the only *true Minute* extant in the Process) it is evident the Ink of the Minutes on the Margent is a great many years *recenter*.

Secondly, All the three Minutes on the Margent of the Inditement, being

beng Signatures of the Procedure of the Parliament, as to this Affair, in plain Parliament; the first thereof 7 Feb. 1661. bears, the then Lord Advocat's giving in the said Inditement, with the former Decreet against Swinton (then Pannel) and craving that the said Decreet might be ratified; and further, that the said new Inditement might be found relevant, and admitted to his Probation; the King & Estates of Parl. are said to ordain **BEFORE ANSWER**, the new Inditement to be given up to Swinton, to see and answer. And yet it is evident by the Records of Parliament, that the Parliament met not at all that day, but only the Articles. And by the true Minute on the foot of the Inditement, the said 7th. of February 1661. the Lords of the Articles ordained the same thing, which the Minute on the Margent falsely says, was ordained by the King and Estates of Parliament, viz. that the said Inditement should be given up to John Swinton of that Ilk, to see and answer; and as it accordingly was: the Copie thereof under the Advocat's hand, being delivered to Swinton, with these words at the foot thereof. (written by one Alexander Reid, the Advocate's Servant at that time, and signed by Mungo Murray, Ormand Pursevant) Edinburgh 7. February 1661. It is appointed, that this Inditement be given to John Swinton, and he to answer upon Tuesday come a fourtnight, being the 26 of this Instant. Agreeable whereunto, a Diary of the Proceedings of that Parliament 1661. written by Robert Hamilton one of the present Senators of the Colledge of Justice, who was then one of the Clerks of Parliament, bears, that upon the 27 February, John Swinton of that Ilk, having formerly received his Inditement, was brought that Day to the Bar, and after his Dittay was read, he was appointed that day fourtnight to give in his legal Defenses. So that it is manifest, that the Parliament not sitting on the 7th of February, and Swinton that day getting his Inditement (by Order of the Articles,) to answer 14 days after; the first day of his Appearance before the Parliament behoved to be the Day mentioned in Robert Hamilton's Diary, and consequently that the said first Minute on the Margent of the Inditement 7 February, 1661. is altogether false. Neither was the term made use of, [**BEFORE ANSWER**] either the Stile of Parliament,

ment, or indeed of any Court at that time, it being a term introduced long after: nor was it at all in this case *intelligible*, it being impossible that an Inditement could be *considered* before it was given up, and *seen* by the Party.

Thirdly, The second of the said Minutes bearing Date the 15 of May 1661. is manifest from *ocular inspection* to be false, and that it and the other two (being writ all at the same time) behoved to be forged after the year 1670. For when ~~the Clerk~~ that writes the Minutes, was writing the Ciphers of the Year, as thinking upon the year wherein the said Minutes were ~~written~~ by him, (which appears by the Earl of *Crawford's* Letter, behoved to be the year 1674.) he hath first written 167 and then *taking himself*, and finding his *mistake*, he makes the Cipher 7 a 6. and adds the Cipher 1. to it, to make it the year which the Minute behoved to bear, *viz.* 1661. the vitiat Correction standing in the Minute thus, 16 6 1. Into which mistake, a Man writing after the year 1670. might easily fall; but it is obvious to Sense, that no Man could have fallen into such a mistake, writing before the year 1670. 2. By this Minute May 15. Swinton is made appearing and judicially confessing that he went with Cromwel and his Army to Worcester, and was with him in that Battel; whereas there was no such judicial Confession made, which certainly if made, had been taken under Swinton's hand, and subscribed by the President of Parliament: neither of which were done. And Robert Hamilton's foresaid Diary bears only, that the said 15 of May, Swinton's Dittay with his Answers, were read before the Parliament in his presence, and he also heard speak verballie for himself, and that the Lord Advocate opposed the Dittay, and produced the former Decreet of Forfeiture against him, (which *de facto* was never produc'd till now, tho the first Minute falsly bear, it was produc'd the 7 Feb.) and which former Decreet the Pannel desiring to see, the Parliament assigned him Friday come eight dayes to see, and say what he could say. Which last part, the foresaid Minute doth also bear, *viz.* That the Pannel was ordained to see the former Sentence of Forfeiture, and to answer Friday come eight dayes, being the 24. of May: but with this difference, that the Minute bears, upon the Pannels desiring to see the said Decreet, it was then

then given up to him. Whereas it is evident by the Copy of the said Decreet, delivered to Swinton by the said Alexander Reid, the Advocate's Servant, that it was not delivered to him till the 17 of May; it being so marked upon the back, with the said Alexander Reid's hand, viz. That it was given to Swinton upon the 17. of May, to answer the 24. By all which it is evident, that Swinton did make no such judicial Confession the foresaid 15 of May, there being no vestige of it, either under his own, or under the President's hand, extant in Process. And it being most absurd, after a judicial Confession, which in Criminals is both Proof and Condemnation, (since *confessus pro condemnato habetur*,) that any further Day should be assigned to the Pannel for Defense. 3. This Minute of the 15 of May 1661, ordains Swinton to see and answer, as said is, against the 24 of May. And yet neither doth the Decreet bear, that Swinton was again called, nor any thing at all of this Matter of Fact, that he was ordained to see the former Decreet upon the 15 of May, and to answer thereunto against the 24. (which those who framed the Decreet, industriously omit, as foreseeing the inserting thereof would have inferr'd a Nullity against it.) Nor was Swinton ever again called, or brought before the Parliament, either that Day, or any time thereafter.

Fourthly, As to the thrid and last of the said Minutes upon the Margent of the Inditement, which is made to be upon the 12. of July 1661. and which is the principal Minute whereupon the pretended Decreet of the Parliament 1661. is founded; the Falsbood thereof is most manifest: in that 1. It makes Swinton compearing that Day as a Pannel, whereas it is certain he did not appear that Day, nor at any time after the 15. of May. 2. By this Minute not only the foresaid pretended Decreet of the Committee of Estates 1651. is ratified, but Swinton is declared of new guilty of the Crime of Treason, upon his judicial Confession. And yet there is no such judicial Confession extant, nor was there ever any such Confession made by him, but what was so qualified as cleared him. 3. It makes the Parliament ratifie the said pretended Decreet 1651. without his being heard upon his Defense against the same, tho a Day was assigned to

to him for that effect. 4. The said Minute has none of the Solemnities of a Sentence of Forfeiture for Treason, seing it does not bear, READ, VOTED, TOUCHED *with the Scepter*, or any Warrant for Publication by sound of Trumpet, or for tearing of Arms: which are the ordinary and indispensable Solemnities in use to be adhibited, in the pronouncing of Sentences and Dooms of Forfeiture in Parliament. And the Signatures of which Sentences and Dooms of Forfeiture, after the voting and touching thereof, are always written upon a Paper apart, distinct from the Process, and signed by the Chancellor, or President of Parliament, and what is punctually observed in all the Forfeitures truly pass'd in this Parliament, as is evident from the Records, No such thing being to be found in Swinton's Case: what doubtlesly would not have been omitted, if any Doom of Forfeiture had truly passed, by VOTE of Parliament, against him.

Fifthly, All the said three Minutes are subscribed by the late Earl of Crawford, as President of the Parliament 1661. with these Letters adjected to his Subscription, *J. P. D. P.* as if subscribed by him in that Parliament, *in praesentia Dominorum Parliamenti*: and the Earl's Letter, which a litle before his Death he wrote to the deceas'd Swinton, in the year 1674. discovers not only that they were not signed by him till then, which was 13 years after, but that they were not so much as written till that time. And the Earl being a Person of such untainted Honour and Reputation, as he was known to be, his Testimony alone in this matter of Fact (so ingenuously declaring the manner how he was prevailed with to sign the said Minutes at that time (and what scruples he had against the doing thereof, when he did it) is sufficient, if there were no more, to convell the truth of these Minutes, and a convincing Demonstration to the world, of their Forgery; and what undue Methods were taken at that time to perpetuat the Ruine of so antient a Family.

Sixthly, And yet there is this further, and which is an Argument unanswerable of the falshood of the said Minutes, whereupon the said pretended Decreet of the Parliament 1661 is founded. That after they were thus made up by Haystoun and the Earl of Crawford's Subscription impetrat thereunto in the manner narrated in his Lordship's Letter,

Sir *Archibald Primrose* the then Clerk Register thought himself not *int*o to give any Extract thereof under his Hand to the Duke of *Lauderdale*, till upon a Petition given in by the Duke to the Lords of Session, bearing, that the said Sir *Archibald* scrupled to give any such Extract, he was ordained by them to do the same: it being impossible to imagin so knowing a man as Sir *Archibald Primrose* was, could have any other reason to scruple at the doing of a thing of this nature, whereunto the duty of his Office oblig'd him, (especially to a Man of such Power as the Duke of *Lauderdale* then was,) unless it had been that he was conscious to himself of the falshood of those Minutes, which to gratifie the Duke, he had perswaded the Earl of *Crawford* to sign so many years after the Parliament 1661.

FROM ALL WHICH, it is evident upon how lame and defective a Title the Estate of *Swinton* hath been possess'd by the late Duke and this Earl of *Lauderdale*, these 30 years by past. The pretended Decreet of the Committee of Estateses 1651. whereupon the Duke obtained his Gift, having proceeded upon such weak Pretences, and defective Probation, and look'd upon as so insignificant, that it was pass'd from by Intenting of a new Inditement for the same Crime, before the Parliament 1661. And albeit a Sentence neither did, nor could pass upon that Inditement (after a Term was assigned by the Parliament for a further Hearing) till *Swinton* had been FURTHER HEARD, which he never was; a Decreet nevertheless is made up on false Minutes, as pass'd in that Parliament, ratifying the former Decreet against him, and forfeiting him of new, (which are terms inconsistent in Law.) And neither the Duke of *Lauderdale*, nor this Earl, having the least colour to justify so horrid a wrong, or the oppression and hardship the deceas'd *Swinton* and his Children have been thereby exposed to during so long a tract of time, with the loss his lawful Creditors have thereby sustain'd; except the sole Pretence of *Swinton*'s having possess'd a part of the Estate of *Lauderdale*, during a few years of the English Usurpation, tho the yearly Rent thereof was far within one half of the yearly Rent of the Estate of *Swinton*: and as to which this *Swinton*, who now insists for Recovery of his Father's Inheritance, being content to allow

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all that ever his Father intromitted with of the Estate of *Lauderdale*,
 the first end of the Earl and his Brother's Intromission with the Estate
 of *Swinton* (which will be of ten times a greater value ;) IT IS
 HOPED the PARLIAMENT *ex Justitia*, will REDUCE the said
 two pretended *Decrets*, and Gift of *Forfeiture*, with all that has
 followed thereupon, and RESTORE this *Swinton* IN INTEGRUM
 against the same.

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